Supreme Court, U.S.
FILED
AUG 27 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-131

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

ELIZABETH THORNTON,

Petitioner,

v.

ROBERT WAHL, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF FOR RESPONDENT EDMUND THORNTON IN OPPOSITION

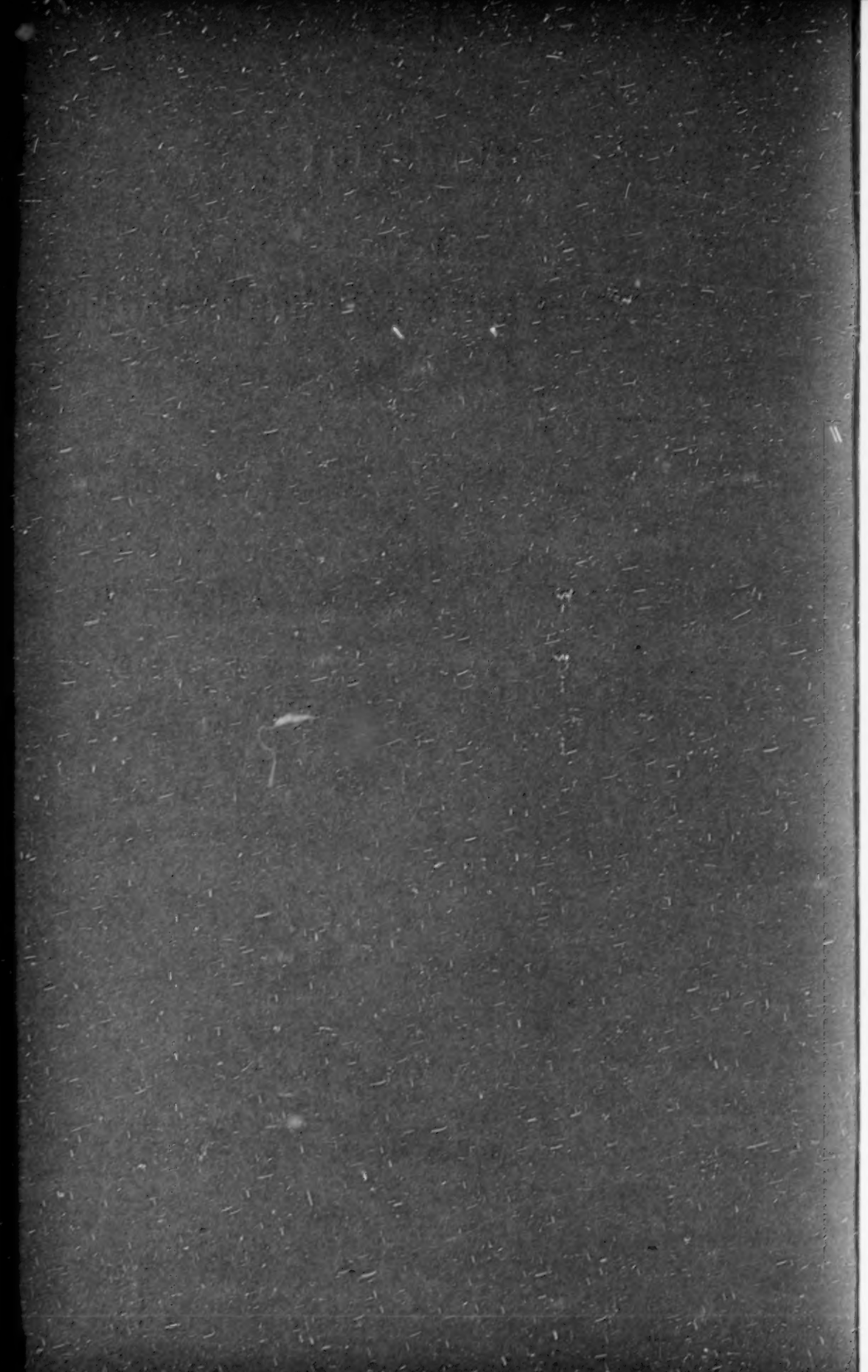
JOAN M. HALL *
SUSAN B. COHEN
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

Attorneys for Respondent Edmund Thornton

* Counsel of Record

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

9 pp



QUESTION PRESENTED

Whether the United States Court of Appeals for the Seventh Circuit has authority to impose attorneys' fees and costs on petitioner for filing a frivolous appeal predicated on a serious misstatement of Illinois law.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	ii
STATUTES	1
STATEMENT	3
ARGUMENT	4
CONCLUSION	6

TABLE OF AUTHORITIES

Cases:	Page
American Security Vanlines, Inc. v. Gallagher, 782 F.2d 1056 (D.C. Cir. 1986)	6
In re TCI Limited, 769 F.2d 441 (7th Cir. 1985)	6

Statutes:

Federal Rule of Civil Procedure 11	1, 2, 5
Federal Rule of Appellate Procedure 38	2, 5
28 U.S.C. § 1912	2, 5
28 U.S.C. § 1927	3, 5

In The

Supreme Court of the United States

October Term, 1986

ELIZABETH THORNTON,

Petitioner,

v.

ROBERT WAHL, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF FOR RESPONDENT EDMUND THORNTON IN OPPOSITION

STATUTES

Federal Rule of Civil Procedure 11: Signing of Pleadings, and Other Papers; Sanctions.

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be

verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Federal Rule of Appellate Procedure 38: Damages for Delay

If a court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

28 U.S.C. § 1912: Damages and Costs on Affirmance

Where a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs.

28 U.S.C. § 1927: Counsel's Liability for Excessive Costs.

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

STATEMENT

In the divorce proceeding of petitioner Mrs. Thornton and respondent Mr. Thornton in 1978, the state court ruled that the family home was Mr. Thornton's property and that Mrs. Thornton was required to leave the home by December 1, 1983. (Pet. App. 1-2). After Mrs. Thornton refused to leave on December 1, Mr. Thornton requested the assistance of respondent Robert Wahl, the local sheriff, and three deputy sheriffs to assist him in removing Mrs. Thornton from the house. On December 10, 1983, after her continued refusal to leave, Mrs. Thornton was arrested for criminal trespass pursuant to Ill. Rev. Stat. ch. 28, § 21-3(a). (Pet. App. 2).

Mrs. Thornton filed this lawsuit in the United States District Court against Mr. Thornton, Mr. Wahl, and the deputy sheriffs on the grounds that her arrest violated five amendments to the Constitution. The District Court granted summary judgment in defendants' favor, concluding that there was probable cause for Mrs. Thornton's arrest and that Mr. Thornton was entitled to enforce the judicial order requiring Mrs. Thornton to leave. (Pet. App. 3, 13).

On appeal to the United States Court of Appeals for the Seventh Circuit, Mrs. Thornton argued for the first time that her arrest was improper because shortly before her arrest, she had filed an application for stay of the state court's ruling requiring her to vacate the home, and that "according to Illinois Supreme Court rules, a motion for a stay automatically stayed judgement [sic] until such time as a ruling is made on the motion for stay." (*Id.*) Her brief on appeal, however, did not cite any specific support for that erroneous proposition of Illinois law. (Pet. App. at 3-4.)

In affirming the ruling of the District Court, the Seventh Circuit concluded that "this appeal rests on a serious misstatement of state law" and chastised Mrs. Thornton's counsel for arguing that in Illinois, an application for stay has the effect of a stay itself. (Pet. App. 5.) After citing the requirements of Rule 11 of the Federal Rules of Civil Procedure, the court then charged both Mrs. Thornton and her counsel for the reasonable attorneys' fees and double costs incurred by the defendants on the appeal. (Pet. App. 7.)

ARGUMENT

The decision below does not warrant further review. The decision of the Court of Appeals is correct and respondent Mr. Thornton relies fully on its reasoning. No conflict exists among the circuits and no important question of federal law is presented.

1. Mrs. Thornton attempts to frame an important question of federal law by arguing that the Seventh Circuit imposed sanctions on her because she prosecuted this civil

rights lawsuit. (Pet. Br. at 6, 7, 9). That is a flagrant misstatement of the court's holding. The Seventh Circuit unambiguously held that its only reason for imposing attorneys' fees and costs on Mrs. Thornton was that the appeal "rests on a serious misstatement of state law," which "turned out not to be true, indeed, turned out to be wildly untrue." (Pet. App. 5, 7). Consistent with its holding, the court assessed sanctions against Mrs. Thornton and her counsel only for expenses incurred by defendants on appeal and not for attorneys' fees or costs incurred in the District Court. Accordingly, Mrs. Thornton's references to the District Court's opinion, which denied without comment defendants' requests for attorneys' fees, is totally irrelevant.

2. Mrs. Thornton's remaining argument in support of this petition is that "the extension of Rule 11 sanction power to the United States Court of Appeals is clearly without foundation." (Pet. Br. at 9). This argument lacks merit because the Court of Appeals has the power, under two rules and two statutes, to assess costs and attorneys' fees on appellants and their attorneys for frivolous or baseless appeals.

Rule 11 provides that an attorney who files frivolous or vexatious papers may be required to pay the opposing parties' expenses, including attorneys' fees. Federal Rule of Appellate Procedure 38 allows the Court of Appeals to award "just damages" and "double costs" for frivolous appeals. The Advisory Committee's notes on Rule 38 state that "the courts of appeals quite properly allow damages, attorneys' fees and other expenses incurred by an appellee if the appeal is frivolous without requiring a showing that the appeal resulted in delay." Two other statutes, 28 U.S.C. §§ 1912 and 1927, similarly allow the Court of Appeals to assess costs, just damages and attorneys' fees against ap-

pellants or their counsel for frivolous appeals. *See American Security Van Lines, Inc. v. Gallagher*, 782 F.2d 1056, 1057 (D.C. Cir. 1986); *In re TCI Limited*, 769 F.2d 441, 445 (7th Cir. 1985). Thus, the Seventh Circuit unquestionably had the power and authority to impose sanctions, including attorneys' fees and double costs, on Mrs. Thornton and her counsel for the frivolous appeal.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

JOAN M. HALL *
SUSAN B. COHEN
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

Attorneys for Respondent Edmund Thornton

Dated: August 25, 1986

* Counsel of Record